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4.3.4 Admissibility procedures

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icon for admissibility procedure

Admissibility procedures are conducted when a Member State does not have to examine whether an applicant qualifies for international protection because of specific circumstances, for example:

- Another Member State is responsible for the application under the Dublin III Regulation;
- Another Member State has already granted protection;
- Another country is considered to be the first country of asylum or a safe third country for the applicant;
- The application is a subsequent one with no new elements; or
- A dependent lodges an application after consenting to be a part of another application.

In these special cases, a Member State conducts the admissibility procedure to verify if the application may still be admitted for examination.

After the CJEU pronouncement of the judgment of Milkiyas Addis on 16 July 2020, the German Federal Administrative Court reopened the case on which the referral to CJEU was based. The CJEU held that failure to hear the applicant would lead to the annulment of the decision unless the applicant is provided with a personal hearing during an appeal, in compliance with the requirements of the recast Asylum Procedures Directive, Article 15. The German court clarified in March 2021 that, when the applicant was not given the opportunity to be heard in a personal interview, the inadmissibility decision is to be set aside. Furthermore, it is at the discretion of the court whether to hold a personal interview or annul the decision and refer the case back to the asylum authority. If the court decides to conduct the personal interview, it must ensure compliance with confidentiality and expressly state in the transcript of the hearing that the interview took place.

Also in Germany, regional administrative courts raised the question whether an application can be deemed inadmissible as a subsequent application after unsuccessful initial proceedings in Denmark. The Administrative Court of Freiburg held that an application cannot be deemed inadmissible as a subsequent application, since Denmark is bound neither by the recast Qualification Directive nor by the recast Asylum Procedures Directive. Deviating from this, the Administrative Court of Magdeburg has ruled that

such applications can be deemed inadmissible, as there is a constitutional asylum and legal protection system in Denmark and it is not the responsibility of the German authorities and courts to check the correctness of Danish decisions.515 The Regional Administrative Court of Schleswig-Holstein has presented the question to the CJEU (C-497/21), which may clarify the matter.

In Austria, the Constitutional Court delivered a key judgment related to applications submitted by EU citizens and to Protocol No 24 on Asylum for Nationals of Member States of the European Union.

The Swedish Migration Agency published a legal position on the conditions under which an asylum application may be rejected in accordance with Chapter 5, Section 1b of the Aliens Act without an examination of the merits and substance. This may apply when the person is granted international protection in a Member State, a non-Member State is considered to be the first country of asylum or a non-Member State is considered to be a safe third country for the applicant. The legal position also provided guidance on the situation when the Swedish Migration Agency may decide that a decision on deportation may be enforced even if it has not become final (rejection with immediate enforcement) 516.

icon for beneficiaries re submitting asylum applications

Box 4.1. Beneficiaries resubmitting an asylum application in another EU+ country

Beneficiaries of international protection can travel to and reside in another Member State under specific conditions. The recast Qualifications Directive, Article 25 underlines that refugees are entitled to travel documents as foreseen in the Geneva Convention and beneficiaries of subsidiary protection receive a travel document when they are unable to obtain a national passport. These documents allow beneficiaries to travel to another EU+ country for a maximum of 90 days. Beneficiaries can also apply for a long-term stay, as any other third-country national, for example to work or study. In addition, after 5 years, they may be entitled to EU long-term residence which gives beneficiaries the right to reside in another Member State if they meet the requirements under the Long-term Residents Directive *(see Section 4.14.2.3)*. Movements into another Member State outside of this legal framework are considered to be unauthorised for beneficiaries.

Over recent years, some EU+ countries – for example Belgium, Germany, Finland, the Netherlands, Norway, Sweden and Switzerland – have seen an increase in unauthorised movements of people who have been granted international protection in another EU+ country. This includes persons who have been granted international protection in an EU+ country, obtained travel documents legally, and then travelled to another EU+ country to apply for asylum again, adding to the case loads of national asylum systems. 517

One of the objectives of the European Commission's Pact on Migration and Asylum is to address this occurrence, for example, through allowing transfers of recognised beneficiaries under the proposed Asylum and Migration Management Regulation or through better tracking of this type of secondary movements under the amended proposal revising the Eurodac Regulation *(see Section 2.1.2)*. Pending the adoption of these proposals, EU+ countries have taken different approaches, often by prioritising additional applications and rejecting them swiftly *(see Section 4.4)*, through modified, stricter reception conditions for applicants (see Section 4.7) or introducing travel bans *see Section 4.14.2.3)*.

The lack of comprehensive data makes it difficult to fully understand the scope of this trend. Data collection under the Dublin III Regulation does not include beneficiaries who move to another Member State *(see Section 4.2)*. National data do not fully capture the magnitude either: while authorities often reject these applications, there may not be a separate procedure on admissibility or data on inadmissibility may not be disaggregated due to the reason of the decision. While the number of inadmissible decisions at the country level may give an indication about this occurrence, they cannot serve as a reliable indicator. More contextual information is also needed, for example on the number of beneficiaries who have received a travel document or the number of beneficiaries who obtained a residence permit to move to another Member State legally before qualifying for EU long-term residence. An advanced method for registration would also be useful to distinguish between applications lodged by people holding an international protection status in another country and other applicants.

Growing jurisprudence from recent years suggests that this occurrence is becoming more significant. This can be seen in the number of cases registered in the EUAA Case Law Database, where many cases relate to Syrians who have been granted international protection for example in Bulgaria, Greece, Hungary or Italy. They move to another EU+ country where they re-apply for asylum, citing difficulties in accessing housing, health care or employment in the country which granted them protection.

In these cases, courts have frequently confirmed the inadmissibility decision taken by national authorities. At other times, courts have sent the cases back because the lower court or national authority failed to thoroughly examine the individual circumstances if a return to the first EU+ country would result in a risk of treatment contrary to the ECHR, Article 3, in line with the CJEU's decisions in 2019 in Ibrahim and others and Hamed and Omar. In exceptional but a growing number of cases, national authorities granted international protection after a re-examination of the facts based on these standards.518

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- 515Regional Administrative Court of Magdeburg, Decision of 17 January 2022, 3 B 382/21 MD, p.6.
- 516Swedish Migration Agency | Migrationsverket. (2021, April 23). Rättsligt ställningstagande. Avvisning av ansökan om uppehållstillstånd med stöd av 5 kap. 1 b § utlänningslagen - RS/065/2021 [Legal position. Rejection of an application for a residence permit on the basis of ch. Section 1 b of the Aliens Act - RS/065/2021]. https://lifos.migrationsverket.se/dokument?documentSummaryId=45478
- 517European Commission. (2021, September 29). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Report on Migration and Asylum. COM(2021) 590 final. https://ec.europa.eu/info/sites/default/files/report-migration-asylum.pdf; European Union Agency for Asylum. (2021). EASO Asylum Report 2021: Annual Report on the Situation of Asylum in the European Union. https://euaa.europa.eu/easo-asylum-report-2021; European Union Agency for Asylum. (2020). EASO Asylum Report 2020: Annual Report on the Situation of Asylum in the European Union. https://euaa.europa.eu/sites/default/files/EASO-Asylum-Report-2020.pdf
- 518European Union Agency for Asylum. (June 2022, forthcoming). Jurisprudence on Secondary Movements of Beneficiaries of International Protection: Analysis of Case Law from 2019-2021.

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